

Not To Be Published:

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
WESTERN DIVISION**

ROBERT J. CONNOR, a/k/a
RAMADAN ABDUL MUBARAK and
EDDIE CARROLL, a/k/a ISLAAM M.
SALAAM,

Plaintiffs,

vs.

JOHN AULT, W.L.. KAUTZKY and
WILLIAM SOUPENE,

Defendants.

No. C01-4123-MWB

**MEMORANDUM OPINION AND
ORDER REGARDING
MAGISTRATE’S REPORT AND
RECOMMENDATION FOLLOWING
BENCH TRIAL**

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I. INTRODUCTION AND BACKGROUND

A. Procedural Background

On December 20, 2001, plaintiffs Robert J. Connor, a/k/a Ramadan Abdul Mubarek and Eddie Carroll, a/k/a Islaam M. Salaam filed this action pursuant to 42 U.S.C. § 1983. They filed an Amended Complaint on November 4, 2002. In their lawsuit, plaintiffs, current and former Muslim inmates at Anamosa State Penitentiary (“ASP”), Anamosa, Iowa, claim that defendants violated their “First Amendment rights to the free exercise of [their] religion.” Amended Compl. at ¶ 23. Specifically, plaintiffs allege: that prison officials’ failure to provide them with Halal meals violated their free exercise of religion; that Muslim inmates were not afforded time in which to conduct their prayers; and, that Muslim inmates, in “on call” status, were not permitted to attend Muslim holiday celebrations if they occurred on the inmates’ “short days.” Plaintiffs request declaratory judgment, an injunction, an award of actual and exemplary damages, attorney fees, and costs.

This case was referred to United States Magistrate Judge Paul A. Zoss to conduct any necessary evidentiary hearings and to submit a report and recommended disposition of the case. The case came before the court for a bench trial on April 8, 2003, at the Federal Courthouse in Cedar Rapids, Iowa. On August 6, 2003, Judge Zoss filed a Report and Recommendation in which he recommends that judgment be entered in favor of defendants. Judge Zoss concluded: that defendants’ failure to provide Halal meals to Muslim inmates did not violate their free exercise rights because ASP provided Muslim inmates with vegetarian meals; that plaintiffs were given adequate opportunities to complete their individual prayers during work hours, and that the temporary restriction on

the plaintiffs' right to attend weekly prayer services and religious events was reasonably related to legitimate penological concerns. Plaintiffs then sought and were granted an extension of time in which to obtain a transcript of the bench trial before filing any objections to Judge Zoss's Report and Recommendation. On November 13, 2003, plaintiffs filed objections to Judge Zoss's Report and Recommendation. The court, therefore, undertakes the necessary review of Judge Zoss's recommended disposition of this case.

B. Factual Background

In his Report and Recommendation, Judge Zoss made the following findings of fact:

The plaintiffs Connor and Carroll both are practicing Muslims, and at all times material to this lawsuit have been sincere followers of the Islamic faith. Connor has been an inmate at ASP since 2001, and remains at the institution. Carroll was an inmate at ASP from early 2002, to the beginning of April 2003, when he was released from custody.

Connor complains that he was denied the right to participate in communal prayer services on three Fridays and at the conclusion of one Ramadan. This occurred because he was in "on call" status on each of these occasions. He also complains about missing one Friday communal prayer service when he arrived late and the door was locked. Additionally, he complains that on several occasions, he was not allowed to pray at the proper time because of assigned work duties, and when he complained about this problem, he was transferred to a lower paying job. Finally, he complains about his diet, including the fact that he is not provided with Halal food, and his food sometimes is prepared or served by homosexuals.

Carroll complains that he was denied the right to participate in communal prayer services on several Fridays because he was in "on call" status, he was denied the right to pray while working at his job, and he was denied entrance to

several Friday prayer services because he arrived late and the doors were locked. He also complains about the type of food that was served at the Eidul-Fitr feasts at ASP.

The court finds neither plaintiff has been denied the right to offer daily prayers. The court accepts the testimony of Imam Tawil that there is no precise time of day required for the five daily prayers. The plaintiffs were given the opportunity to offer all five of the prayers each day, although not always at the times the plaintiffs would have preferred. The court also finds the plaintiffs always have been provided with food that was acceptable to eat under the principles of Islam.

The plaintiffs have two remaining issues. They complain about the doors to the chapel being locked after the commencement of Friday prayer services. They also complain about being denied access to communal prayer services while in “on call” status.

Prisoners sometimes are delayed, often through no fault of their own, and cannot make it to religious services on time. The doors to the room where Friday Islamic prayer services are held are locked shortly after the services begin, while the same doors remain unlocked during Sunday Christian services. As a result, prisoners who are late for Islamic services are met with a locked door, while prisoners who are late for Christian services are allowed to enter and participate. Hebron testified prisoners who are late for Muslim services can ask a guard at the security office to let them in, but this apparently was not known to the plaintiffs.

The court finds this situation, while regrettable, did not result from any intentional action by any of the named defendants to deny the plaintiffs the right to exercise their religious freedoms and beliefs. The limitation on the plaintiffs’ right to worship caused by the locked doors was minor. There was a solution to the problem – a late inmate could ask a guard let him into the room – that the plaintiffs could have learned about if they had made the appropriate inquiry. Finally, the doors to the room were locked for

reasons of safety and security, a concern uniquely within the discretion of prison officials.

Similarly, the limitations on the plaintiffs' right to worship resulting from the prison's "on call" policy" are an unintended consequence of efforts by prison officials to apportion limited resources at the institution by limiting the numbers of inmates who are utilizing those resources. The fact that an inmate is unable, for a short period of time, to attend a religious service is a regrettable consequence of these efforts.

Report and Recommendation at pp. 16-19 (footnote omitted). Upon review of the record, the court adopts all of Judge Zoss's factual findings that have not been objected to by plaintiffs.

The court makes the following additional findings of fact from the record:

ASP's Living Unit B ("LUB") is the largest open cellblock in the State of Iowa. LUB is comprised of a single, totally open cell originally designed for about 300 inmates. However, as the population at ASP has grown over the years, up to 570 inmates have been housed in LUB. At the time of trial in this case, there were 489 inmates in LUB. The lack of enough prison jobs to employ all the inmates at ASP and the large number of inmates in LUB generated noise, control and safety problems. In February 1994, a major disturbance occurred at LUB. As part of the response to this disturbance and the other problems caused by overcrowding in LUB, a revised "on call" status was implemented. Under the current ASP policies, after completing a one-week initial orientation, an inmate is placed in "on call" status for a minimum of 30 days, and remains in that status until a job is found for him within the institution. While in "on call" status, a prisoner is allowed to leave LUB during the weekend only for meals. During the week, he is allowed out of LUB for a "long day" every other day, and for a "short day" on alternate days. On a

“long day,” the prisoner is permitted to leave his cell for meals and for four hours in the afternoon. On a “short day,” a prisoner is permitted to leave his cell only for meals. A prisoner in “on call” status who has a “long day” on Monday, Wednesday, and Friday, would have a “short day” on Tuesday and Thursday. The following week, the prisoner would have a “long day” on Tuesday and Thursday, and a “short day” on Monday, Wednesday, and Friday. At any given time, about 200 inmates are in “on call” status at ASP. This significantly relieves stress on the prison’s resources.

While in “on call” status, a prisoner is not able to attend religious services unless the service takes place in the afternoon of a “long day.” Thus, prisoners in “on call” status are not allowed to attend Saturday or Sunday services. Significant to this case, Muslim prisoners who are in “on call” status can attend Friday Jum’ah services, but only every other week, when their “long day” falls on Friday. Similarly, inmates in “on call” status can attend the communal Eidul-Fitr feast at the conclusion of Ramadan, but only if it falls on their “long day.”

II. ANALYSIS

A. Standard Of Review

Pursuant to statute, this court’s standard of review for a magistrate judge’s Report and Recommendation is as follows:

A judge of the court shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made. A judge of the court may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate [judge].

28 U.S.C. § 636(b)(1). Similarly, Federal Rule of Civil Procedure 72(b) provides for review of a magistrate judge’s Report and Recommendation on dispositive motions and

prisoner petitions, where objections are made, as follows:

The district judge to whom the case is assigned shall make a *de novo* determination upon the record, or after additional evidence, of any portion of the magistrate judge's disposition to which specific written objection has been made in accordance with this rule. The district judge may accept, reject, or modify the recommended decision, receive further evidence, or recommit the matter to the magistrate judge with instructions.

FED. R. CIV. P. 72(b).

The Eighth Circuit Court of Appeals has repeatedly held that it is reversible error for the district court to fail to conduct a *de novo* review of a magistrate judge's report where such review is required. *See, e.g., Hosna v. Goose*, 80 F.3d 298, 306 (8th Cir.) (citing 28 U.S.C. § 636(b)(1)), *cert. denied*, 519 U.S. 860 (1996); *Grinder v. Gammon*, 73 F.3d 793, 795 (8th Cir. 1996) (citing *Belk v. Purkett*, 15 F.3d 803, 815 (8th Cir. 1994)); *Hudson v. Gammon*, 46 F.3d 785, 786 (8th Cir. 1995) (also citing *Belk*). Because objections have been filed in this case, the court must conduct a *de novo* review. With these standards in mind, the court turns to consideration of plaintiffs' objections to Judge Zoss's Report and Recommendation.

B. Objection To Findings Of Fact

Plaintiffs initially object to Judge Zoss's factual finding that plaintiffs were given the opportunity to offer all five of their prayers, although not always at the times they would have preferred. Plaintiffs contend that plaintiff Connor testified that when he was working the food line he was not allowed to leave for prayer. Imam Tawil testified about the five daily prayers required by Muslims. The first prayer is said early in the morning, the second prayer is said at about 1:00 p.m., the third prayer is said at about 3:30 p.m., and

the fourth prayer is said at approximately 5:30 p.m..¹ These prayers are supposed to be said as close to the prescribed time as possible, but a Muslim has up until the time of the next prayer to say a particular prayer. Thus, a Muslim would have until 3:30 p.m. to say the second daily prayer, but the closer the Muslim says the prayer to its intended 1:00 p.m. time the better it is for the individual. Tr. at 55-56. Connor did testify that when he was working as a food server he was not allowed time off to conduct his afternoon prayer. Tr. at 168-69. Plaintiff Connor further testified that he was required to work from 6 a.m. to 5:15 p.m. each day with only one hour off. Tr. at 176. Associate Warden Hebron, however, testified that inmates would be accorded more than one break in the course of a work shift lasting from 6 a.m. to 5:15 p.m. Tr. at 205. The record does not reflect when such a break would have occurred. As such, the court cannot determine whether Connor could have said his third daily prayer at that time. However, taking Connor's testimony at face value, he has not proven that he had insufficient time to say his afternoon prayer after his work shift was completed at 5:15 p.m. Therefore, this objection is denied.

C. Objections To Conclusions Of Law

1. Turner analysis

Plaintiffs object to Judge Zoss's legal conclusions under *Turner v. Safley*, 482 U.S. 78 (1987). However, before analyzing a prison regulation under *Turner*, in a claim arising under the First Amendment's Free Exercise Clause, an inmate must first establish that a challenged policy restricts the inmate's free exercise of a sincerely held religious belief. *Kind v. Frank*, 329 F.3d 979, 980 (8th Cir. (8th Cir. 2003); *Brown-El v. Harris*, 26 F.3d 68, 69 (8th Cir. 1994); *Iron Eyes v. Henry*, 907 F.2d 810, 813 (8th Cir. 1990). If these

¹Imam Tawil did not testify as to when the fifth prayer was to be conducted.

two prerequisites are established, then the reasonableness of a prison policy is determined pursuant to the factors articulated in *Turner v. Safley*, 482 U.S. 78, 89-90 (1987). The court must consider four factors to determine if regulation of exercise of religion is reasonable. *Turner*, 482 U.S. at 89; *see also O'Lone v. Estate of Shabazz*, 482 U.S. 342, 350-351 (1987). In *Turner*, the United States Supreme Court considered whether Missouri prison regulations restricting inmate correspondence and marriages were constitutionally permissible. *Turner*, 482 U.S. at 91-93. The Court upheld the restrictions on correspondence, noting the rational relationship between the restrictions and prison security, but struck down the restrictions on inmates' rights to marry. *Id.* at 96. The reasonableness test announced in *Turner* by the court balances an inmate's free exercise right and the prison's legitimate correctional goals and security concerns. The *Turner* reasonableness test sets forth four factors to be considered in determining when a regulation is reasonably related to legitimate penological interests. First, there must be a "valid, rational connection' between the prison regulation and the legitimate governmental interest put forward to justify it." *Turner*, 482 U.S. at 89; *accord O'Kane*, 482 U.S. at 350. Second, a reviewing court must assess whether there are "alternative means of exercising the right that remain open to prison inmates." *Turner*, 482 U.S. at 89; *accord O'Kane*, 482 U.S. at 351. Third, a court must determine "the impact accommodation of the asserted constitutional right will have on guards and other inmates, and on the allocation of prison resources generally." *Turner*, 482 U.S. at 89; *accord O'Kane*, 482 U.S. at 352. Finally, "the absence of ready alternatives" to the prison regulation must be explored. The "existence of obvious, easy alternatives may be evidence that the regulation is not reasonable." *Turner*, 482 U.S. at 89. Here, plaintiffs have filed objections to Judge Zoss's conclusions with respect to the third and fourth *Turner* factors. The court will take up plaintiffs' objections to Judge Zoss's conclusions with respect to the *Turner* factors in

turn.

2. *Third Turner factor*

Plaintiffs object to Judge Zoss's recommended conclusions regarding the third *Turner* factor. The third *Turner* factor requires the court to consider "the impact accommodation of the asserted constitutional right will have on guards and other inmates, and on the allocation of prison resources generally." *Turner*, 482 U.S. at 90. Judge Zoss found that if "on call" inmates in ASP's Living Unit B ("LUB") were permitted to attend all religious services then the number of inmates who are not confined to their cells would increase and that this increase would pose "an impermissible potential threat to the safety and internal security of inmates and staff at ASP." Report and Recommendation at 31. Judge Zoss further found that exempting Muslim inmates from the "on call" policy would weaken the incentive program employed by ASP of providing "on call" inmates with additional privileges if they act in accordance with prison rules. Plaintiffs argue that accommodation of plaintiffs by means of giving passes to only those inmates who have been registered with the Imam and have signed up for Ramadan would have had a negligible impact on guards and other inmates because there are relatively few "on call" Muslim inmates at ASP. This argument, however, ignores that such an accommodation here could either open the floodgates for all other "on call" inmates in LUB to request passes to attend religious services on their short days, or appear to give Muslim inmates special treatment. *See O'Lone*, 482 U.S. at 352-53 (observing that special arrangements for one group may create problems because other inmates perceive favoritism); *Iron Eyes*, 907 F.2d at 814-15 (noting that the danger of prison friction and unrest resulting from giving, or appearing to give, special treatment to one group of prisoners is a valid concern). Here, Associate Warden Hebron testified that he feared that "on call" inmates would use religious services as an excuse to get out of their cells on their short days,

thereby undercutting the policies behind the “on call” status to combat noise, security and safety problems in ASP. These are all legitimate penological interests which could possibly be undermined by giving an accommodation to plaintiffs. Therefore, the court concludes that the third *Turner* factor weighs against plaintiffs and this objection is denied.

3. *Fourth Turner factor*

Plaintiffs also object to Judge Zoss’s recommended conclusions regarding the fourth *Turner* factor. The fourth *Turner* factor requires the court to consider that “if an inmate claimant can point to an alternative that fully accommodates the prisoner’s rights at *de minimis* cost to valid penological interests, a court may consider that as evidence that the regulation does not satisfy the reasonable relationship standard.” *Turner*, 482 U.S. at 91. As the Supreme Court observed in *Turner*, the existence of “obvious, easy alternatives may be evidence that the regulation is not reasonable, but is an ‘exaggerated response’ to prison concerns.” *Id.* at 90. Thus, in applying the fourth *Turner* factor, courts are to look for obvious, easy alternatives to the prison’s asserted policy and examine whether the impact of those alternatives on penological goals is *de minimis*. However, as the Supreme Court has emphasized, this is not a least restrictive alternative test. Prison officials need not demonstrate they have considered or tried all other methods of dealing with the issue before courts will be satisfied with the prison’s resolution. *Id.* at 91. Judge Zoss concluded that there were no obvious, easy alternatives to ASP’s “on call” policy restrictions which would accommodate plaintiffs’ rights while having a *de minimis* cost to ASP’s valid penological interests in combating noise, control and safety problems at ASP. Rather, Judge Zoss concluded that the alternatives posed by plaintiffs, the use of passes, was likely to produce undesirable consequences. Plaintiffs object to this conclusion. As to this factor, plaintiffs rely on their previous arguments that the record shows that the use of passes would not create noise, security, or safety problems. However, as explained

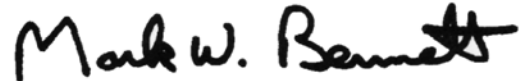
above, the court fails to find such support in the record. Contrary to plaintiffs' contention, there is sufficient evidence supporting defendants' argument and Judge Zoss's conclusion that providing passes cannot be provided at a *de minimis* cost to valid penological interests. Thus, the court concludes that the fourth *Turner* factor also weighs against plaintiffs and this objection is denied. Therefore, the court concludes that defendants are not liable on any of the legal theories asserted by plaintiffs.

III. CONCLUSION

The court **accepts** Judge Zoss's Report and Recommendation. Therefore, the court orders that judgment shall be entered in favor of the defendants and against plaintiffs.

IT IS SO ORDERED.

DATED this 11th day of March, 2004.

A handwritten signature in black ink that reads "Mark W. Bennett". The signature is written in a cursive, flowing style with a horizontal line underneath the name.

MARK W. BENNETT
CHIEF JUDGE, U. S. DISTRICT COURT
NORTHERN DISTRICT OF IOWA